



WISCONSIN

DEPARTMENT OF WORKFORCE DEVELOPMENT

Division of Economic Support
Bureau of Welfare Initiatives

**TO: Economic Support Supervisors
Economic Support Lead Workers
Training Staff
FSET Administrative and Provider Agencies
Child Care Coordinators
W-2 Agencies**

BWSP OPERATIONS MEMO

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**FROM: Stephen M. Dow
Program Implementation Team
Policy Analysis and Program Implementation Section**

SUBJECT: "PUBLIC CHARGE" IN MEDICAL ASSISTANCE ELIGIBILITY

EFFECTIVE DATE: May 26, 1999

PURPOSE

This Operations Memo describes the Immigration and Naturalization Services' (INS) new definition of 'public charge' and how it relates to Medicaid eligibility.

BACKGROUND

Under INS rules, an individual determined to be a 'public charge' by a field officer can have their status affected when it comes to:

1. Re-entering the United States after an absence of more than 6 months.
2. Being allowed to act as a sponsor of family members wishing to enter the United States from a foreign country.
3. Having his/her immigration status upgraded to allow for more permanent residence.

Studies over the last few years have shown that many non-citizens have decided not to apply for Medicaid (or eligibility under the new Children Health Insurance Program) because they do not want to risk being labeled a 'public charge'. Some non-citizen parents have decided not to apply for Medicaid/CHIP eligibility for their citizen children out of concern that it may later disadvantage the family.

In the absence of regulations defining 'public charge,' INS field officers had broad discretion in applying the law. INS has now published regulations that were effective upon publication that define a public charge and make it clear that coverage under Medicaid or the Children's Health Insurance Program do not meet the test of a public charge. The only exception to this rule applies to individuals who are institutionalized for long-term care services, beyond that which would be considered 'rehabilitative'.

NEW POLICY

Under the new INS rules, the receipt of Medicaid or BadgerCare by an individual or by the children or spouse for whom the individual is legally responsible does not establish the person as a 'public charge'.

There is a single exception. A person who receives Medicaid while in a medical institution and who is in the institution for more than the length of a rehabilitative stay is considered to be a public charge. For institutionalized individuals who are concerned about being considered a 'public charge', please have that person, or person acting in his/her behalf, contact the INS field office for your area to seek clarification of the difference between a rehabilitative and other types institutional stays.

In addition, the Health Care Financing Administration (HCFA) has made it clear to states that no Medicaid applicant or recipient can be referred to INS except where the referral is made under the auspices of the administration of the Medicaid program. This means that undocumented, non-qualifying, or qualifying aliens cannot be referred to INS, unless Medicaid needs to determine their location (for repayment or fraud prosecution) or to ascertain their alien status. In short, an eligibility worker cannot report a Medicaid recipient (or anyone in the Medicaid assistance group) whose alien status is undocumented to the INS.

CONTACTS

If you have questions about the new 'public charge' please contact your area administrator.